

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

JOSE JIMENEZ,

Petitioner,

04 Civ. 10155

-against-

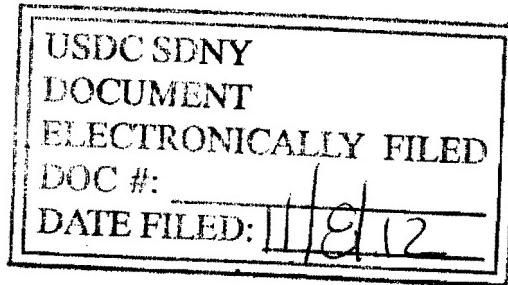
OPINION

WILLIAM PHILLIPS,

Respondent.

-----X

Sweet, D.J.



Petitioner Jose Jimenez ("Jimenez") filed a petition seeking habeas corpus relief pursuant to 28 U.S.C. § 2254. The petition was denied on January 19, 2006. (Dkt. No. 7). Jimenez later filed a motion to vacate the Court's judgment pursuant to Fed. R. Civ. P. 60(b), and that motion was denied on June 26, 2012. (Dkt. No. 16).

On July 25, 2012, Petitioner submitted his request for a certificate of appealability ("COA") to the United States Court of Appeals for the Second Circuit. (Dkt. No. 17).

A COA may only be issued "if the applicant has made a substantial showing of the denial of a constitutional right."

See 28 U.S.C. § 2253(c)(2). Section 2253(c)(1) of Title 28 of the United States Code provides, in pertinent part, that:

[u]nless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from -

- (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
- (B) the final order in a proceeding under section 2255.

28 U.S.C. § 2253(c)(1).

A review of the relevant portions of the file and the reasons set forth in this Court's June 26, 2012, Opinion establish that the Petitioner has failed to make a substantial showing of the denial of a constitutional right. Therefore, the Petitioner's request for a COA is denied. See Lozada v. United States, 107 F.3d 1011 (2d Cir. 1997), abrogated on other grounds by United States v. Perez, 129 F.3d 255, 259-60 (2d Cir. 1997).

It is so ordered.

New York, NY
November 7, 2012



ROBERT W. SWEET
U.S.D.J.